

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 22-CR-170-JFH

ELGA EUGENE HARPER,

Defendant.

OPINION AND ORDER

Before the Court is the Government's Opposed Motion to Introduce Evidence Pursuant to Federal Rule of Evidence 804 ("Motion"). Dkt. No. 160. Defendant, though notionally opposing the Government's Motion, has declined to respond to the Motion, and the matter is ripe for consideration.

Prior to remand from the Tenth Circuit Court of Appeals [Dkt. No. 138], a jury trial was held, during which the alleged victim in this matter, Ellie Finlay, testified. Dkt. No. 160 at 2-3. Ms. Finlay has since passed away. Dkt. No. 160-1. The Government accordingly moves, pursuant to Fed. R. Evid. 804(b)(1), to introduce the prior trial testimony of Ms. Finlay. The Government's Motion is granted.

Though hearsay is generally subject to exclusion, Fed. R. Evid. 804(b) sets forth various exceptions to this rule, and Rule 804(b)(1) provides:

The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) *Former Testimony*. Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had—or, in a civil case, whose predecessor in interest had—an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

The prior testimony of Ellie Finlay is clearly admissible under Rule 804(b)(1). In fact, this seems to be the precise situation for which the rule is designed. Ms. Finlay is unavailable due to her passing, and Defendant previously had a sufficient opportunity to cross-examine Ms. Finlay with the same motive for doing so during her prior testimony.

Given the foregoing, the Government's Opposed Motion to Introduce Evidence Pursuant to Federal Rule of Evidence 804 [Dkt. No. 160] is GRANTED.

Dated this 4th day of March 2025.



JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE